84-723

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In The

Supreme Court of the United States

October Term, 1984

No.

DAVID A. GARRAGHTY, Warden, *et al.*,
Petitioners,

v.

LEMUEL HUBERT HINTON,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

GERALD L. BALILES
Attorney General of Virginia

WILLIAM G. BROADDUS
Chief Deputy Attorney General

DONALD C. J. GEHRING*
Deputy Attorney General

GUY W. HORSLEY, JR.
Assistant Attorney General

Supreme Court Building
101 North Eighth Street
Richmond, Virginia 23219
(804) 786-2071

Attorneys for Petitioners
**Counsel of record*

2 ?? P

QUESTION PRESENTED

Does A Complaint Under 42 U.S.C. § 1983 Which Merely Alleges An Isolated And Unauthorized Attack By Prison Guards Upon An Inmate State A Claim Of Cruel And Unusual Punishment Under The Eighth Amendment?

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42 U.S.C. § 1983 .....*passim*

APPLICABLE PROVISIONS OF LAW

VIII AMENDMENT TO THE CONSTITUTION

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

XIV AMENDMENT TO THE CONSTITUTION

Section 1 (in pertinent part)

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983 (in pertinent part)

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

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PETITION FOR WRIT OF CERTIORARI TO THE JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

OPINIONS BELOW

The opinion of the United States District Court is unreported and is included herein as Appendix A.[1] The opinion of the Court of Appeals for which review is sought is unreported and is included as Appendix B.

---

[1] Petitioners herein (defendants below) are employees of the Brunswick Correctional Center, a state prison operated by the Virginia Department of Corrections. David A. Garraghty is the warden of the prison, and Sam L. Batts and Stephen T. Sawyer are members of the security staff, holding the ranks of captain and corporal, respectively. Dale Pinchback is the chairman of the prison disciplinary committee. For purposes of this petition, only the actions of the petitioners Batts and Sawyer are relevant, as only they are implicated in the alleged assault upon respondent. Respondent is Lemuel Hubert Hinton, an inmate confined to the Brunswick Correctional Center for conviction of a felony.

JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit was entered on August 6, 1984. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

On April 5, 1983, respondent Hinton, an inmate confined at the Brunswick Correctional Center within the Virginia Department of Corrections, complained to a captain of the security force about regulations at that prison. The respondent described the events during this incident (as relevant to this petition)[2] in his *pro se* petition filed under 42 U.S.C. § 1983 as follows:

> While said dispute was in progress Cpl. Sawyer came up behind the plaintiff and bumped into plaintiff and stepped on plaintiff's heels and stated to Plaintiff, 'don't talk to my captain like that.' Plaintiff continued to talk to Captain Batts and Corporal Sawyer started to step on Plaintiff's heals (sic) and bumped into Plaintiff again and when Plaintiff turned around to face Corporal Sawyer, Captain Bates grabbed plaintiff from behind and began to choke him. At which time Captain Batts told Sawyer to grab his legs. At this time Plaintiff dropped his papers and book and tried to break from the choke that was being applied by Captain Batts and plaintiff couldn't receive any air. Corporal Sawyer grabbed Plaintiff's leg and started to twist his ankle and Plaintiff requested for them to stop and tried to break free and did get his ankle away from Corporal Sawyer and once Plaintiff got his ankle aloose (sic), Captain Batts began to choke the plaintiff tighter and Corporal Sawyer begun (sic) to hit Plaintiff in the

[2] Two other unrelated claims were dismissed by the district court and that dismissal was affirmed by the court of appeals. Those claims are not relevant to this petition.

> midsection with his radio and grabbed plaintiff's arms and began to twist them and at that time Captain Batts informed Plaintiff that he was going to the basement of "B" Building.

Respondent alleges that this conduct violated his constitutional rights.

By order of February 29, 1984, the district court, finding that respondent did not allege that petitioners intended to infringe upon any of respondent's specific constitutional rights, granted petitioners' motion for summary judgment. Respondent appealed the dismissal to the court of appeals.

By order of August 6, 1984, the court of appeals held that the district court erred in granting summary judgment for petitioners. Citing its earlier precedent in *King* v. *Blankenship*, 636 F.2d 70 (4th Cir. 1980), the Fourth Circuit stated that a prisoner is protected under the Eighth Amendment from an unjustified striking, beating or infliction of bodily harm. Accordingly, the court vacated the dismissal of this claim and remanded the matter for a determination whether the use of force against respondent amounted to cruel and unusual punishment.

ARGUMENT FOR GRANTING WRIT OF CERTIORARI

I.

There Are Irreconcilable Conflicts Among The Circuit Courts In Interpreting The Constitutional Significance Of Custodial Assaults.

This Court granted certiorari in *Parratt* v. *Taylor*, 449 U.S. 917 (1980), in order to resolve the confusion and diversity of views among the federal courts of appeals in analyzing inmate claims for property losses couched in terms of constitutional violations. Similar confusion and

diversity of views exist among the courts of appeals with respect to inmate allegations of excessive physical force by their custodians. Routinely, such complaints are filed in the federal courts, characterizing custodial assaults as violating the Eighth Amendment and therefore cognizable under 42 U.S.C. § 1983.

One circuit has specifically ruled that an isolated and spontaneous beating of an inmate by custodians does not state a claim of cruel and unusual punishment under the Eighth Amendment. *George* v. *Evans,* 633 F.2d 413 (5th Cir. 1980). Another holds that such claims do not implicate any federal right giving rise to a § 1983 claim. *Cole* v. *Smith,* 344 F.2d 721 (8th Cir. 1965). While some of the other circuits, as discussed below, have found such allegations to state a claim under the Eighth Amendment, there is no consensus as to what proof is necessary to sustain a claim.

The Fourth Circuit's standard for review requires only that the inmate prove that he was the victim of an "unjustified striking, beating or infliction of bodily harm" at the hands of one acting under the color of state law. *King* v. *Blankenship,* 636 F.2d 70, 72 (4th Cir. 1980). The Tenth Circuit requires a plaintiff to prove (1) that a prison guard's assault was wanton (the guard intended to harm the inmate); (2) that the force was unnecessary to maintain or restore discipline; and (3) that the use of force resulted in either severe pain or lasting injury. *Sampley* v. *Reuttgers,* 704 F.2d 491 (10th Cir. 1983).

Other circuits have ruled, without articulating a discernible standard, that physical beatings in a custodial setting may violate the Eighth Amendment's proscription against cruel and unusual punishment. *See United States* v. *Georvassilis,* 498 F.2d 883 (6th Cir. 1974), and *Furtado* v.

Bishop, 604 F.2d 80 (1st Cir. 1979) (suggestion in dictum that the appropriate standard is whether the assault is "shocking to the conscience").

One of the most cited decisions concerning the constitutional significance of a custodial beating is *Johnson* v. *Glick*, 481 F.2d 1028 (2nd Cir.), *cert. denied*, 414 U.S. 1033 (1973), wherein the Second Circuit Court of Appeals ruled that a pretrial detainee's complaint alleging an assault by a guard must be analyzed in terms of the due process clause without reference to any "specifics" of the Bill of Rights. In so ruling, the court suggested in dictum than a spontaneous and unauthorized attack upon an inmate by a guard does not constitute cruel and unusual punishment. *Johnson* at 1032. This dictum is significant in its recognition of the limitations of the Eighth Amendment in terms of a feedral court's review of a custodial attack.

The due process analysis of *Johnson* has been used by other circuits as a basis for accepting jurisdiction of claims involving custodial assaults under 42 U.S.C. § 1983, thereby avoiding the Eighth Amendment question. *Polite* v. *Diehl*, 507 F.2d 119 (3rd Cir. 1974); *Meredith* v. *Arizona*, 523 F.2d 481 (9th Cir. 1975) (freedom from assault is "an aspect of the right to liberty," *Meredith* at 482). The continuing validity of the Fourteenth Amendment due process analysis as developed in *Johnson* is questionable, however, in light of this Court's rulings in *Parratt* v. *Taylor*, 451 U.S. 527 (1981), and *Palmer* v. *Hudson*, 52 U.S.L.W. 5052 (1984). In those rulings, respectively, this Court held that neither the negligent nor intentional loss of an inmate's personal property by prison officials states a claim under the due process clause of the Fourteenth Amendment if the state provides the inmate with an adequate means of redress.

At least one circuit has interpreted *Parratt* as severely

limiting the due process theory for reviewing allegations of assaults brought under § 1983. In *Rutledge* v. *Arizona Board of Regents*, 660 F.2d 1345 (9th Cir. 1981), the court held that *Parratt* restricts the review of any Fourteenth Amendment claim brought under § 1983 involving an assault to a determination of whether the victim has adequate remedies under state law. Finding adequate state remedies available, the *Rutledge* court found no deprivation of liberty without due process of law and, accordingly, dismissed the Fourteenth Amendment claim. The practical effect of such ruling is that those circuits which have used a "due process" analysis for custodial assaults under § 1983 may now be forced to review them solely in terms of the Eighth Amendment.

Judicial confusion in the disposition of inmate claims of physical abuse has been recognized by the district courts, some of which have expressed their frustrations in reported cases. *See Dandridge* v. *Police Department of the City of Richmond*, 566 F.Supp. 152 (E.D. Va. 1983) and *Schiller* v. *Strangis*, 540 F.Supp. 605 (D. Mass. 1982). That confusion is also reflected in dissenting opinions issued at the circuit levels [*see* dissents in *Johnson* at 1034; *Polite* at 124 and *Bethea* v. *Crouse*, 417 F.2d 504 at 510 (10th Cir. 1969)]; and in conflicting opinions issued by the same circuit courts. *Compare George* with *Tolbert* v. *Bragan*, 451 F.2d 1020 (5th Cir. 1971), and *Cole* with *Jackson* v. *Bishop*, 404 F.2d 517 (8th Cir. 1968). Without this Court's guidance by which to evaluate these claims, the lower courts will continue to reach inconsistent results.

II.

An Isolated And Unauthorized Attack Upon An Inmate By A State Employee Does Not Constitute Cruel And Unusual Punishment Under The Eighth Amendment

Respondent alleges herein that during the course of a "verbal dispute" between him and two security officers, he was choked, manhandled and hit in "the mid-section" before being placed in detention. His claim that such conduct constituted cruel and unusual punishment under the Eighth Amendment was dismissed by the district court in a ruling which was subsequently reversed by the Fourth Circuit Court of Appeals. The Fourth Circuit's reversal was premised on its earlier precedent in *King*, which announced the following rule in reviewing Eighth Amendment claims involving inmate allegations of physical abuse by custodians:

> Lest there be doubt as to the rule in this circuit, we specifically hold that the unjustified striking, beating, or infliction of b dily harm upon a prisoner gives rise to liability under 42 U.S.C. § 1983 on the part of one who, acting under color of state law, engages in such conduct without just cause. 636 F.2d at 72.

While the *King* ruling suggests factors which should be considered in determining whether the use of force is constitutionally permissible, it only requires a finding of unjustified force to support an award of damages. It is submitted that this rule of law is simply incorrect, as it stretches the Eighth Amendment beyond its intended scope.

This Court has never interpreted the Eighth Amendment as a panacea for all complaints of physical abuse by inmates against their keepers. The original intent of the Eighth Amendment was to "proscribe 'torture[s]' and other 'barbar[ous]' methods of punishment." *Estelle* v. *Gamble*, 429 U.S. 97 (1976) at 102 (quoting from Granucci, *Nor Cruel*

And Unusual Punishment Inflicted: The Original Meaning, 57 Calif. L. Rev. 839 (1969) at 482). While recent decisions of this Court have held that the Eighth Amendment extends protection to state inmates against the wanton and unnecessary infliction of pain [*see Estelle* and *Rhodes* v. *Chapman*, 452 U.S. 337 (1981)], the Court has also held that the Amendment does not provide a forum for the adjudication of simple torts such as medical malpractice. *Estelle* at 107.

Under the *King* standard, an inmate's claim that a correctional officer used excessive force against him will require a federal judge to preside over what would be a simple assault claim cognizable in a small claims court except for the fact that the defendant happens to be employed by the state. Whether the Eighth Amendment has been violated may depend upon whether a gratuitous shove or punch by an officer inflicted "severe" as opposed to "moderate" pain. To permit such trivialization of constitutional principles is not only contrary to precedents such as *Rhodes* and *Estelle*, but it ignores the basic premise of the Eighth Amendment: to protect individuals convicted of crimes against cruelty imposed or sanctioned by the government as punishment, as opposed to the random and unauthorized act of a state employee.

This Court has consistently held that § 1983 should be restricted to remedying specific and narrowly defined constitutional wrongs. In *Screws* v. *United States*, 325 U.S. 91 (1945), the Court reversed a conviction under the criminal counterpart to § 1983 of two officers for their fatal beating of a suspect in the course of an arrest. That reversal was due to the failure of the trial court to instruct the jury that they must find defendants guilty of the specific intent to deprive their victim of an established constitutional right. The Court stressed the limited scope of the civil rights statutes:

> [The statute] should be construed so as to respect the proper balance between the States and the federal government in law enforcement. Violation of local law does not necessarily mean that federal rights have been invaded. The fact that a prisoner is assaulted, injured, or even murdered by State officials does not necessarily mean that he is deprived of any right protected or secured by the Constitution or laws of the United States. 325 U.S. at 108-109.

This dictum was cited with favor by this Court in its decision in *Paul* v. *Davis,* 424 U.S. 693 at 700 (1976).

This Court has repeatedly reversed lower courts' awards under 42 U.S.C. § 1983 for claims which, although pled as constitutional violations, are no more than simple tort claims which should be addressed in state courts. *See Paul* v. *Davis,* 424 U.S. 693 (1976) (police dissemination of false information concerning an individual's criminal record, while perhaps defamatory, is of no constitutional significance); *Baker* v. *McCollan,* 443 U.S. 137 (1979) (wrongful arrest and detention pursuant to a facially valid warrant does not violate the due process clause). *See also Parratt* and *Palmer,* wherein the Court ruled that neither the negligent nor intentional taking of an inmate's property by a state employee violated the due process clause where there was an adequate remedy under state law. While these decisions are primarily concerned with interpreting the Fourteenth Amendment, they also evidence the Court's view that the Constitution does not provide remedies for every tort committed by a state employee. As stated in *Baker:*

> Section 1983 imposes liability for violations of rights protected by the Constitution, not for violations of duties of care arising out of tort law. Remedy for the latter type of injury must be sought in state court under

> traditional tort-law principles. Just as '[m]edical malpractice does not become a constitutional violation merely because the victim is a prisoner [citing *Estelle, supra*], false imprisonment does not become a violation of the Fourteenth Amendment merely because the defendant is a state official. 443 U.S. at 146.

Estelle, which does involve the Eighth Amendment, holds medical malpractice, a simple tort, is not within the proscription of the Eighth Amendment. A simple assault which is not authorized or condoned by high prison officials is no more worthy of constitutional review than are defamation, false imprisonment or medical malpractice.

The number of civil rights suits filed by state prisoners against their custodians has increased dramatically over the last 15 years. For the year ending June 30, 1970, there were 2,030 civil rights petitions filed by state prisoners; that number had increased to 18,477 by 1983. *See* 1983 *Annual Report Of The Director Of The Administrative Office Of The United States Courts.* The number of such cases, coupled with the newly recognized limitations upon the "due process" theory as a means of evaluating custodial assault cases, underscores the importance of a consistent and logical interpretation of the Eighth Amendment with respect to such claims.

Petitioners submit that the appropriate standard for judicial review in applying the Eighth Amendment to inmate complaints of physical brutality is that suggested by the ruling in *George* and the dictum in *Johnson.* Only if an inmate's allegations suggest that the use of unjustified force against him has been authorized or countenanced by prison administrators as a means of state imposed punishment should it be viewed as stating a cognizable § 1983 claim. Such an analytical model would avoid equating simple (and private) assaults with those wrongs which are "cruel and

unusual punishment." More importantly, it would be responsive to the concerns underlying the Eighth Amendment.

The Eighth Amendment has been interpreted consistently by this Court as providing a check upon governmental excesses in punishing those convicted of criminal offenses. *See generally Gregg* v. *Georgia,* 428 U.S. 153 (1976). In reviewing Eighth Amendment precedents involving physical abuse, the Second Circuit Court of Appeals in *Johnson* stated the following:

> The thread common to all these cases is that 'punishment' has been deliberately administered for a penal or disciplinary purpose, with the apparent authorization of high prison officials charged by the state with responsibility for care, control, and discipline of prisoners. In contrast, although a spontaneous attack by a guard is 'cruel' and, we hope, 'unusual,' it does not fit any ordinary concept of 'punishment.' 481 F.2d at 1032.

To permit the *Hinton* rule to prevail over that suggested by the *Johnson* dictum would force federal trial courts to adjudicate purely personal disputes between inmates and their custodians. Moreover, it will contribute to the continued "log-jamming" of the federal courts by inmate complaints that should be resolved in state courts.

The suggested test is consistent with Supreme Court precedent in reviewing Eighth Amendment challenges to conditions in state prisons. In *Estelle,* as pointed out by Justice Stevens' dissent, the inmate was not simply alleging that he was wronged by an individual in obtaining medical care, but his complaint "represents a crude attempt to challenge the system of administering medical care in the prison where Gamble is confined." 429 U.S. 97 at 109. The Court in *Estelle* was concerned not with a private dispute or tort,

but with the obligations of the government (as represented by the medical director of the facility and other high prison officials) to provide basic medical services. Similarly, in *Rhodes* the Court's concern was with the general pervasive conditions of a prison as operated by government affecting all inmates confined therein.

To extend the Eighth Amendment to include spontaneous and unauthorized assaults would ignore standing precedent of this Court and would trivialize the cruel and unusual punishment clause of the Eighth Amendment. Accordingly, the *Hinton* rule should be reversed.

CONCLUSION

For the reasons stated above, petitioners respectfully pray that the Court will grant their Petition for a Writ of Certiorari, and reverse the judgment of the Fourth Circuit Court of Appeals.

Respectfully submitted,

GERALD L. BALILES
Attorney General of Virginia

WILLIAM G. BROADDUS
Chief Deputy Attorney General

DONALD C. J. GEHRING
Deputy Attorney General

GUY W. HORSLEY, JR.
Assistant Attorney General

Supreme Court Building
101 North Eighth Street
Richmond, Virginia 23219

CERTIFICATE OF SERVICE

I, Guy W. Horsley, Jr., Assistant Attorney General of Virginia, of counsel for petitioners, and a member of the Bar of the Supreme Court of the United States, do hereby certify that on the 1st day of November, 1984, I mailed 3 copies of the foregoing Petition for Writ of Certiorari to Lemuel Hubert Hinton, #127419, respondent herein, Brunswick Correctional Center, Post Office Box 429, Lawrenceville, VA 23868.

GUY W. HORSLEY, JR.
Assistant Attorney General

APPENDIX

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

Civil Action No. 83-0654-R

LEMUEL HUBERT HINTON

V.

DAVID A. GARRAGHTY, WARDEN, et al

JUDGMENT

For the reasons set forth in the accompanying opinion, it is hereby ORDERED that judgment is ENTERED for the defendants.

D. DORTCH WARRINER
United States District Judge

Date: 29 February 1984

App. 2

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

Civil Action No. 83-0654-R

LEMUEL HUBERT HINTON

---

v.

DAVID A. GARRAGHTY, WARDEN, et al

OPINION

Plaintiff, proceeding *pro se* and *in forma pauperis,* filed this complaint pursuant to 42 U.S.C. § 1983 on 27 October 1983. On 18 November defendants filed a motion for summary judgment. On 7 December plaintiff was notified of an opportunity to respond which he did on 28 December. The motion for summary judgment is now ripe for consideration. The Court has jurisdiction under 28 U.S.C. § 1343.

On 30 November plaintiff moved the Court for production of documents. Pursuant to Local Rule 11.1(j), "[t]he Court will not consider any motion concerning discovery matters unless the motion is accompanied by a statement of counsel that a good faith effort has been made between counsel to resolve discovery matters at issue." As plaintiff's motion is not accompanied by such a statement of a good faith effort, his motion is hereby DISMISSED.

Plaintiff's first claim is that he was assaulted and beaten by defendants Batts and Sawyer while confined at Brunswick

Correctional Center. Plaintiff alleges that the defendants initiated an altercation between plaintiff and defendants and then beat and choked plaintiff. Defendants counter that plaintiff assaulted defendant Batts and that they only exerted the amount of force necessary to restrain plaintiff. The "intent to violate a specific constitutional right, or knowledge that the natural consequence of an act will infringe a specific constitutional right, is the proper litmus test for identifying the tort that makes out a constitutional claim." *Dandridge* v. *Police Department of the City of Richmond,* 566 F.Supp. 152, 160 (E.D.Va. 1983). As plaintiff does not allege that defendants intended to infringe upon any specific constitutional right, his claim is without merit and defendants' motion for summary judgment as to this point shall be GRANTED.

Plaintiff's second claim is that he was denied access to an attorney at an Adjustment Committee Hearing. Plaintiff alleges that he requested the services of private counsel at the hearing, that counsel did not arrive prior to the hearing, and that defendants provided no legal advisor in place of plaintiff's absent counsel. Plaintiff was not constitutionally entitled to representation of counsel at the hearing. *Baxter* v. *Palmigiano,* 425 U.S. 308, 314-15; *Wolff* v. *McDonnell,* 418 U.S. 539, 569-70 (1974). While Virginia prison regulations allow an inmate to retain an attorney for a disciplinary hearing, plaintiff was not hindered in calling to arrange for representation. The fact that the attorney contacted was unwilling or unable to travel to Brunswick Correctional Center is not attributable to defendants.

Plaintiff's third claim is that he was denied due process of law in the Adjustment Committee Hearing. Plaintiff cites the fact that the testimony of defendants Batts and Sawyer was conflicting and inconsistent. Complaint at 5-6. As this

Court has previously noted, it "does not sit to review the factual findings of prison disciplinary committees." *Kelly* v. *Cooper*, 502 F.Supp. 1371, 1376 (1980). The only procedural safeguards constitutionally mandated are advanced written notice of the charges, written findings, and generally, the right to call witnesses. *Wolff* v. *McDonnell*, 418 U.S. 539, 563-66 (1974). As plaintiff has failed to allege that any of these procedural safeguards were denied him, this claim is without merit.

Plaintiff's final claim is that he was denied access to a magistrate so that he might bring criminal charges against defendants Batts and Sawyer for their assault upon him. The affidavit of Assistant Warden Pruett indicates that an inmate who wishes to see a magistrate may contact prison officials, who give him the name and address of the magistrate. The inmate then contacts the magistrate and the magistrate determines whether or not it is necessary for him to talk to the inmate. Plaintiff acknowledges that he contacted Assistant Warden Pruett and met with him on 1 June 1983 in regard to the incident concerning defendants Batts and Sawyers. Plaintiff admits that he contacted and "received no redress from the Magistrate Rick Clary." Response to Motion for Summary Judgment at 4. Despite these admissions, plaintiff categorically states that "defendants denied him meaningful access to the Courts." Response to Motion for Summary Judgment at 3. The underlying basis of plaintiff's claim appears to be that the Magistrate failed to issue warrants for the arrest of defendants Batts and Sawyer upon the application of plaintiff. However, plaintiff has failed to show that defendants infringed upon his right of access to communicate with the magistrate or any other court official. Accordingly, his claim is without merit.

As no material issues of fact remain in dispute, defendants' motion for summary judgment shall be GRANTED.

An appropriate order shall issue.

Should plaintiff desire to appeal, written notice of appeal must be filed with the Clerk of the Court within 30 days of the entry hereof.

D. DORTCH WARRINER
United States District Judge

Date: 29 February 1984

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FOURTH DISTRICT

No. 84-6179

LEMUEL HUBERT HINTON,

Appellant,

v.

DAVID A. GARRAGHTY, Warden; CAPTAIN SAM L. BATTS;
CORPORAL STEPHEN T. SAWYER;
DALE PINCHBACK, Chairman Adjudgment Comm.,

Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. D. Dortch Warriner, District Judge. (C/A No. 83-0654-R)

Submitted: May 24, 1984 Decided: August 6, 1984

Before RUSSELL and CHAPMAN, Circuit Judges, and HAYNSWORTH, Senior Circuit Judge.

(Lemuel Hubert Hinton, Appellant Pro Se. Richard F. Gorman, III, Assistant Attorney General, for the Appellees.)

PER CURIAM:

Lemuel Hubert Hinton, a Virginia inmate, appeals from the district court's entry of summary judgment in favor of the defendants on his 42 U.S.C. § 1983 complaint. Hinton alleges, in his complaint, that: (1) two of the defendants, Batts and Sawyer, beat and choked him without just cause; (2) he was denied access to an attorney and denied due process at his adjustment committee hearing; and (3) he was denied access to the courts in order to bring assault charges against Batts and Sawyer.

In granting summary judgment for the defendants, the district court found that Hinton's first claim did not state a constitutional violation because there was no allegation that Batts and Sawyer intended, in beating Hinton, to infringe upon his constitutional rights. Excessive use of force, amounting to cruel and unusual punishment, does not, however, depend upon the use of that force to prevent a prisoner from exercising some other constitutional right. Rather, prisoners are protected, under the Eighth Amendment, from unjustified striking, beating, or infliction of bodily harm by one who engages in such conduct without just cause. *King* v. *Blankenship*, 636 F.2d 70, 72 (4th Cir. 1980).

> In determining whether the constitutional line has been crossed, a court must look to such factors as the need for the application of force, the relationship between the need and the amount of force that was used, the extent of injury inflicted, and whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm.

King, supra, at 73 (quoting *Johnson* v. *Glick*, 481 F.2d 1028, 1033 (2d Cir. 1973)).

We therefore vacate the district court's dismissal of

Hinton's first claim and remand for a determination of whether the use of force against Hinton amounted to cruel and unusual punishment in light of the above factors. Hinton's appeal from the dismissal of his second and third claims is without merit, and we affirm, on the reasoning of the district court, the judgment of dismissal as to those claims.

Because the dispositive issues recently have been decided authoritatively, we dispense with oral argument. For the reasons above stated, the judgment of the district court is affirmed in part and vacated in part, and the case is remanded.

AFFIRMED IN PART,
VACATED IN PART,
AND REMANDED.

ORIGINAL

Supreme Court, U.S.
FILED
JAN 21 1985
ALEXANDER L. STEVAS
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1984

NO. 84-723

DAVID A. GRARRAGHTY, Warden, et.al.

Petitioners.

-vs-

LEMUEL HUBERT HINTON.

Respondent.

RESPONDENT'S BRIEF OPPOSING PETITIONERS'

PETITION FOR WRIT OF CERTIORARI TO:

U.S. COURT OF APPEALS-FOURTH CIRCUIT

Lemuel Hubert Hinton,
Nottoway C.C.
P.O. Box 488
Burkeville, Va. 23922

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1984

NO. 84-273

DAVID A. GARRAGHTY, Warden, et.al.

Petitioners.

-vs-

LEMUEL HUBERT HINTON.

Respondent.

BRIEF OPPOSING PETITON FOR WRIT OF CERTIORARI TO THE UNTIED STATES COURT OF APPEALS -FOURTH CIRCUIT

RESPONDENT, Lemuel Hubert Hinton, PRO SE, respectfully moves this Court to deny the Petitioner's application for review on an application for Writ of Certiorari to the judgment of the United States Court of Appeals for the Fourth Circuit entered on August 6th. 1984.

Respondent moves this Court to affirm without opinion the decision of the Court of Appeals upon a determination that the said judgment relies upon core aspects of this Court's holdings both as to Due Process of law under Parratt v. Taylor,

451 U.S. 527, 101 S.Ct. 1908 (1981), and the Eighth Amendment under the criteria of Estelle v. Gamble, 429 U.S. 97. 97 S.Ct. 285, 290 (1976).

WHEREFORE, Petitioner's application for certiorari raises issues fully resolved by these holdings and relied upon the Court of Appeals rule in granting judgment in favor of Respondent, and should therefore be denied in summary affirmance of these said holdings.

JURISDICTIONAL STATEMENT

Although juridiction is invoked by Respondent under 28 U.S.C., Section 1254(1); Respondent submits that review on certiorari is further governed by Rule 17, Rules of the Supreme Court of the United States, and that Petitioner's have therefore improvidently relied upon the said Statutory provisions without justifying such reliance by any indication that the Rules of the Court applies to grant such review in this case through any considerations entitled to under the said Rule.

Respondent submits that the statute does not apply where considerations governing review under that statute is absent; therefore, this Court should refuse to determine the merits of the application for certiorari and deny review thereto.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S.C.A. CONST. AMEND. VIII:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

U.S.C.A. CONST. AMEND, XIV:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty,or property,without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATUTORY PROVISIONS INVOLVED

42 U.S.C.A., Section 1983 (in pertinent part):

"Every person who,under color of any statute, ordinance regulation, custom, or usage, of any State or Territory or the District of Columbia, subject or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and law, shall be liable to the party injured

in any action at law, suit in equity, or other proper proceeding for redress."

CODE OF THE COMMONWEATLH OF VIRGINIA: (Pertinent part only):
SECTION 8.01-195.3(6)

Subject to the provisions of this artilce, the Commonwealth shall be liable for claims for money only accruing on or after July 1, 1982, on account of damages to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any state employee while acting within the scope of his employment under circumstances where the Commonwealth, if a private person, would be liable to the claimant for such damage, loss, injury or death or for punitive damage, nor shall the amount recoverable by any claimant exceed $25,000, or the maximum limits of any liability policy maintained to insure against such negligence or other tort, if such policy is in force at the time of the act or omission complained of, whichever is greater, exclusive of interest and costs. .....

..... (A)ny recovery based on the following claims --

are hereby excluded from the provisions of this article:

(6) Any claim arising out of the institution or prosecution of any judicial or administrative proceedings even without probable cause."
(1983 Cum. Supp. Code of Virginia, at 32-33)

COMMONWEALTH OF VIRGINIA DEPARTMENT OF CORRECTIONS DIVISION OF ADULT SERVICES DIVISIONAL GUIDELINES:

Divisional Guidelines (DGL) 861 (VIII) Procedures:

A. Code of Inmate offenses:

The following series of offenses are listed in order of their seriousness, i.e. Series 100 and 200 offenses are major offenses. Series 300 are minor offenses.

222. Using vulcar or insolent language directed toward employees or in the presence of the public who are not associated with or employed by the Department of Corrections. NOTE: When this charge is written, the reporting officer

should specify the insolent or vulgar language used."

C: Penalties to be Imposed: (revelant portions only)

1. Only one penalty within a penalty range may be imposed for each violation.

Offenses	Penalties
200 - 231	1 - 7.

B: Authorized penalties:

The following are penalties or disciplinary actions which may be imposed for violations of the Code of Inmate offenses (in order of severity):

1. Reprimand, the fact of which may be reduced to and entered in the inmate's record.
2. Loss of the following priveleges for a maximum of up to 30 days: etc.
3. Confiscation of personal radio, television, stereo or tape player.
4. Cell restriction or quarters restriction for a maximum of fifteen (15) days.
5. Loss of bonus for a maximum of 30 calendar days.
6. Isolation from 1-15 claendar days.
7. Loss of good conduct time up to 30 days and/or isolation from 1-15 days.

STATEMENT OF FACTS

Respondent Hinton disputes the characterization of the case merely by quoting the inartfully narrated statement of the original Complaint sd done by the Petitioners in their application for Writ of Certiorari to the Judgement of the United States Court of Appeals for the Fourth Circuit. SEE: Petitioner's Brief at (2).

The revelant facts representing the Respondent's claim as determined by the Court of Appeals are as follows:

April 15, 1983, Respondent visited the Barber Shop of the Brunswick Correctional Center (B.C.C.) an presented and institutional pass to gain admission for a haircut. Officer Ezzel refused to grant him permission to have a hair-cut, and upon disagreement with the refusal to honor the pass, Cpt. Batts was consulted.

Both Cpt. Batts and Respondent Hinton are black males. Respondent Hinton's pass was disapproved by Cpt. Batts, and Hinton was ordered back to his building.

As cavil over this disapproval of the institutional pass and denial of the hair-cut, Respondent was walking away as ordered to his building when he called Cpt. Batts a "white man's nigger."*

*The term is derisvely used against those black males in positions of authority both as officers or inmates assigned to some position who show a martinent disposition in applying rules and regulations which supervisors apply with discretion themselves.

Cpl. Sawyer a white correctional officer having arrived at the scene heard the comment of Respondent Hinton. Respondent had several books in his hand at the time and was wearing rubber shower shoes on his feet. Respondent was grabbed from behind in a strangle-hold as he was walking away making these comments and had walked passed Cpt. Batts with Cpl. Sawyer in front of him at the time. Cpl. Sawyer used his radio as a club on Respondent while Cpt. Batts kept the strangle-hold on Respondent. Cpl. Sawyer is six feet three and weighs in the neighborhood of three hundred pounds; Cpt. Batts is five feet seven and weighs more than Respondent Hinton who is five-feet six and weighs one hundred and fourty pounds.

After the assault by both men, Respondent was placed upon prehearing detention pending charges for what accrued. In addition to institutional charges, Cpl, Sawyer charged Respondent Hinton with a criminal offense of assault; this charge was tried and dismissed by the trial court after Cpl. Sawyer testified and crosss-examined and before Cpt. Batts who was present, was ever called as a witness. The trial Court ruled that it was satisfied that Respondent Hinton had not made any assault upon Cpl. Sawyer; Cpt. Batts never alleged that Hinton assaulted him and only Sawyer made direct allegations of a direct assault, and such charge was dismissed after trial.

DISPOSITIVE ISSUES PRESENTED

(A)

That the judgment of the Court of in King v. BLankenship, 636 F. 2d 70, 72-73 (4th. Cir. 1980), has been sufficiently squared with the Court's holdings in Parratt v. Taylor, 451 U.S. 527, 101 S.Ct. 1908 (1981) and fully relies upon the fundamental aspects of Eighth Amendment criteria under Estelle v. Gamble, 429 U.S. 97, 97 S.Ct. 285, 290 (1976), to require no further review on certiorari to reiterate such recently reiterated and basis principles.

Last term this Court rejected the Sixth Amendment claim to counsel by inmates in administrative segregation pending criminal charges in United States v. Gouveia, __ U.S.__, 104 S.Ct. 2292 (1984), and any Fourth Amendment right in the prison environment to bar any degree of institutional searches in Hudson v. Palmer, __ U.S.__, 104 S.Ct. 3194 (1984); these cases adds to the imprimatur of Parratt v. Taylor, 451 U.S. 527, 101 S.Ct. 1908 (1981) licensing both the negligent and deliberate loss of an inmate's personal property by correctional officers.

Lured by this deferential standard of review of challenges to penal regulations and actions by officers in penal institutions, Petitioners now urge this Court to hold that there is no Eighth Amendment right affording such protections as extended by the Court of Appeals for the FOurth Circuit, against unjustified,

wanton, and unnecessary infliction of pain or harm upon any inmate by the Petitioners.

Deference has been granted to penal institutions and their decisions against various forms of constitutional challenges. SEE: Pell v. Procunier, 417 U.S. 817, 8220828, 94 S.Ct. 2800, 2804-2807 (1974); Hudson v. Palmer, supra; United States v. Gouveia , supra; Wolf v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963 (1974).

HOWEVER, Respondent subnits that this Court has properly limite such deference in respect to certain constitutional claims which does not impede legitimate penal policies and public concerns in such institutions and the organization of prison discipline, and properly determined that there is no 'iron curtain between an inmate and the Constitution.' SEE: Wolf v. McDonnell, 418 U.S. at, 554, 94 S.Ct. at 2974 (1974).

Respondent submits that an unprovoked attack by a six feet three, three hundred pounds correctional officer adided by another who had placed a strangle-hold from the back upon a diminutive 5' 6", Respondent Hinton, was sufficiently grave in the wanton, unnecessary and unjustified infliction of pain and harm upon him to invoke Eighth Amendment protections as determined by the Court of Appeals in granting judgment in Respondent's favor and reversing the grant of summary judgment in Petitioner's behalf in the District Court.

It is not denied that Cpt. Batts grabbed Respondent in a strangle-hold from the back and that Cpl. Sawyer was infront the Respondent and administered punishment to carry out the purpose for which he had been grabbed from the back by his superior officer.

That Cpr. Batts placed the strangle-hold upon Respondent is submitted as a clear invitation to Cpl. Sawyer to assist in the assault upon the Respondent and accomplish the intent of his superior officer in joining the assault upon Respondent.

Therefore, the case presents a clear factual context of a superior officer initiating the assault through a hold upon Respondent when his back was turned and the other officer present assisting in the assult by aiding his superior officer accomplish their purpose.

Respondent does not deny that there are conflicts in the holdings of the Cour of Appeals below on this issue. However, Respondent submits that these conflicts are not sufficiently established for the purpose of considerations governing review on certiorari, and that the rule adopted by the Fourth Circuit Court of Appeals and applied in Respondent's favor in the judgment challenged by the Petitoners, tracks the core aspects of FOurth Amendment law, that any such conflicts should be resolved in a case presenting some conflict with constitutional principles established in the holdings of this Court rather than mere conflicts with other circuits when the rule of the FOurth Circuit itself is not shown to be inccnsistent with any holdings of this Court.

At the outset, Respondent respecfully submits, that the unprovoked nature of the assault is established both as a matter of law and fact.

Respondent was never charged with assault on Cpt. Batts, and Cpl. Sawyer, who alone prosecuted Respondent for an alleged assault through criminal complaitn in the state Courts, had such complaint dismissed after trial agianst Respondent by the trial COurt.

Wherefore, Respondent submits that RES JUDICATA and collateral estoppel applies to resolve all factual issues in his favor to establish that Respondent never made any assault upon either Sawyer or Batts to grant these officers any excuse for the assults by both men upon Respondent. SEE: Allen v. McCurry, 449 U.S. 90,104, 101 S.Ct. 411, 419-420 (1980).

Respondent argues that the use of vulgar language as alleged by Cpt. Batts, is not summarily punished by the use of force through an attack upon his person by two officers as a means of initiating prosecution in an administrative proceedings.

In the context of prison discipline, Commonwealth of Virginia Department of Corrections Divisional Guidlines have sufficiently elevated the use of Vulgar language to a major offense to permit the further opprobrium of assault by two correctional officers upon the Respondent. SEE: Appendix "

Phenomenonal perennial development of Eighth Amendment law in other contexts sufficiently guides the Courts below to determine the precise standards for determining Eighth Amendment claims by discerning the core functions of the constitutional proscritptions embodied therein. SEE: Rummell v. Estelle, 445 U.S. 263, 272, 100 S.Ct. 1133, 1138 (1980); Furman v. Georgia, 408 U.S. 238, 273, 92 S.Ct. 2726, 2744 (1972); Robinson v. California, 370 U.S. 660, 666, 82 S.Ct. 1417, 1420 (1962); Trop v. Dulles, 356 U.S. 86, 99, 78 S.Ct. 590, 597 (1958).

Respondent submits that Eighth Amendment petitons dominate the calendar of this Court, and that the Court has granted increasingly summary disposition of these cases upon determination that adequate considerations for review on certiorari are absent in these cases routinely filed thereto.

Wherefore, Respondent submits, that this case presents no new conflict with holdings of this Court and that it too should be summarily denied for insufficient show that considerations for review in this Court under its certioraro jurisdiction has been established by Petitioners.

Respondent submits that the rule of the Fourth Circuit in King v. BLankenship, 636 F. 2d 70, 73 (4th. Cir. 1980), sufficiently

identifies the Eighth Amendment parameters as relying wholly upon the immemorial core proscriptions delineated as follows from the holdings of the said Court:

> "The precise formulation of when the excessive use of force gives rise to a cause of action under Section 1983 is not an easy one, but in Johnson v. GLick, 481 F. 2d at 1083, the factors to be considered were identified as follows:
>
> In determining whether the constitutional line has been crossed, a court must look to such factors as the need for the application of force, the relationship between the need and the amount of force that was used, and the extend of injury inflicted, and whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm." SEE: 636 F. 2d at 73.

The factual basis for application of this Eighth Amendment rule is not in issue; however, Respondent submits that the rule in King v. Blankenship, supra, as recited above, recognizes the same principle announced in Estelle v. Gamble, 429 U.S. 97,103 97 S.Ct. 285, 190 (1976).

This Court has announced that that Eighth Amendment rule makes an evolving standard, and even the core principles of the Eighth Amendment proscribes the wanton infliction of pain and harm under Estelle v. Gamble, supra, to place the rule of King, supra, within the basic requirements of Eighth Amendment provisions.

Respondent submits that the standard of King v. BLankenship, supra, presumes several basis aspects of the Eighth Amendment criteria to render such rule irreducible in its requirements that the force be unjustified, that it be wantonly imposed, and that such force additionally be excessive.

WHEREFORE, Respondent submits that the worst scenario of Eighth Amendment proscriptions is encompassed in the rule of King v. Blankenship, supra, and is therefore congruous to the basic principles enunciated in every holding of this Court in other context under the EIghth Amendment standard against the wanton infliction of pain or harm.

Wherefore, Respondent submits, that where every consistent holding of this Court can be relied upon to resolve any conflicts between the Circuits on the said issue, and where the challenged rule itself is not inconsistent with any of these holdings, the considerations for review on certiorari must be relegated to other applications which presents conflcit with the holdings of this Court and not as here, wholly in accordance with basis principles which need not be further reiterated thereto,

II.

The intentional and deliberate unjustified attack by two correctional employees upon a diminutive Respondent Hinton sufficiently asserts an Eighth Amendment claim of the wanton, unjustified and execessive use of force under Estelle v. Gamble, 429 U.S. 97, 103, 97 S.Ct. 285, 190 (1976).

Assault upon Respondent Hinton by a 6 feet three, 300 pounds Cpl. Sawyer, and Cpt. Batts, of the Brunswick Correctional Center in Virginia, while Respondent was pinned from behind in a strangle-hold from behind, was determined by the Fourth Circuit to present

an Eighth Amendment claim. Respondent was further struck while being strangled from behind, by the use of a radio used as a club to beat the Respondent into submission, merely through the alleged use of vulgar language alleged later by Cpt. Batts.

Respondent was found not guilty of any assault on either of these men through criminal trials after the indictment was dismissed after a trial at which the Court found on the basis of Cpl. Sawyer's testimony that the Respondent had not assaulted him.

Petitioners would have this Court revert to the holdings of Screws v. United States, 325 U.S. 91, 108-109 (1945), and disregard the holdings of this Court in Estelle v. Gamble, supra, recognizing that the Eighth Amendmenr criteria as an evolving standard sufficiently enunciated in Estelle v. Gamble, supra.

In respect to the standards of Estelle v. Gamble,supra, the Court made it clear that an Eighth Amendment violation can therefore adequately rely upon the use of excessive or wanton force to inflict pain or harm.

This Court has held in other context under such evolved standards that:

> " The sanction imposed cannot be so totally without penological justification

that it results in the gratuitous infliction of suffering. " SEE: Rhoades v. Chapman, 452 U.S. 337, 346, 101 S.Ct. 2392, 2399 (1981).

The Court further held in another Eighth Amendment context, that:

"It is fundamental that causing harm intentionally must be punished more severelly than causing harm unintentionally." SEE: Enmund v. Florida, __ U.S.__, 102 S.Ct. 3001, 3377 (1982).

Respondent therefore submits that the holdings in King v. BLankenship, supra, recognizes all these aspects, of intentional harm, gratuitous infliction of punishment without penalogical justification, and the inflcition of punishment to encompass every seminal and fundamental aspect of the Eighth Amendment criteria in irreducible formulation of that provision in the prison context.

Respondent further submits that the Fourth Circuit has further additionally distinguished an isolated attack upon an inmate by another inmate from an attack upon an inmate by correctional officers. SEE: Withers v. Levine, 615 F. 2d 158, 161 (4th. Cir. 1980); Woohous Virginia, 487 F. 2d 889 (4th. Cir. 1973).

Respondent therefore submits, that the enumeration of the Petitioners issue on appeal has shunted the standards of attack by inmates upon another to that by guards upon inmates and seek to superimpose one standard upon the other irrespective of these differing situations and considerations which ought to be made for the purpose of the Eighth Amendment criteria.

THE Courts have consistently rejected such attempts in holding otherwise. SEE: Skevofilax v. Quigley, 586 F. Supp. 532, 542-544 (D.C. N.J. 1984) wherein the Court held, INTER ALIA, that:

> "Plaintifffs must show that the injury inflicted rose to the level of a constit-tutional tort, i.e. that it was so egre-gious as to exceed the boundries of wrongful injuries redressable under tort law and deprived the victim of a Fourteenth Amendment liberty interests without due process of law. ... If the assault alleged here so "shock the conscience" that liability is found, the assaults would be, of necessity, be in violation of clearly established lawm and, as a matter of law, the defendants would not be entitiled to qualified immunity.

Morever, if a due process requirement is annexed to the Eighth Amendment protections under Parratt v. Taylor, 451 U.S. 527, 101 S.Ct. 1908 (1981), it is clear that the Petitioners have not established any state remedies sufficiently to require the claim to be determined a state Court forum.

Respondent submits that the 8th. Amendment does have some due process component. SEE: Baker v. McCollom, 443 U,S. 137, 146-147, 99 S.Ct. 2689, 2695-2696 (1979); Estelle v.Gamble, supra, at 106, 97 S.Ct. at 295; Roe v. Wade, 410 U.S. 113, 152-156, 93 S.Ct. 705, 726-728 (19730); Rochin v. California, 342 U.S. 165, 172, 72 S.Ct/ 205, 209 (1952); Perry v. Walker, 586 F. Supp. 1264, 1266-1267 (E.D.. Va. 1984).

The prosecution of Respondent's claim of unwarranted and unjustified and excessive use of force by the Petitioners, cannot be brought in the state court under the tort claims act of the Commonwealth of Virginia. SEE: Code of Virginia (1950) Section 8.01-195.3(6), as amended.

Wherefore, Respondent respectfully submits that the Fourth Circuit properly determined the claim as an Eighth Amendment claim and that analysis of the claim under a due process of law aspect as required under Parratt v. Taylor, supra, does not militate for any further determination than that concluded by

the Court of Appeals in the present case.

Respondent submits that the due process of analysis of Parratt v. Taylor, supra, is akin to abstention, and that the following determinations of this Court in Moore v. Sims, 442 U..S. 415, 425, 99 S.Ct. 2371, 2378 (1979), governs the determination of federal jurisdiction to determine constitutional claims in every context including the Eighth Amendment claim determined by the Fourth Circuit. This Court held, INTER ALIA, that:

> "Abstention is approporiate unless state law clearly bars interposition of constitutional claims."

WHEREFORE, under Parratt v. Taylor, supra, the Respondent submits that the Code of Virginia (1950) Section 8.01-195.3(6), bars the interposition of the claims presented in the state Court, and that the said claims were properly determined in the federal court and granted by the Court of Appeals below.

THEREFORE Respondent moves this Court to affirm the judgment of the Court of Appeals as a proper and fundamental resolution of Eighth Amendment criteria and due process of law.

C O N C L U S I O N

For all of the foregoing reasons, Respondent Hinton prays that this Court will affirm the judgment and determination of the United STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, and deny the Petitioners application for Writ of Certiorari to the said judgment of the Court below.

Respectfully submitted

BY: Lemuel Hubert Hinton

LEMUEL HUBERT HINTON

Respondent-PRO SE.

CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing"Respondent's Brief Opposing the Petition for Writ of Certiorari to the Judgment of the UNited States Court of Appeals, for the Fourth Circuit, was mailed to Mr. Guy W. Horsley, Jr., Assistant Attorney General, 101 N. 8th. Street, Supreme Court Building, Richmond. Virginia 23219, on this: 18th day of January 1985.

BY: Lemuel Hubert Hinton

LEMUEL HUBERT HINTON

Respondent (Pro Se.